

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

FEBRUARY 22, 2000

IN RE:

**APPLICATION OF TRIVERGENT
COMMUNICATIONS, INC. FOR A CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY TO
PROVIDE COMPETING LOCAL AND
INTEREXCHANGE TELECOMMUNICATIONS
SERVICES IN THE STATE OF TENNESSE**

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DOCKET NO. 99-00806

**ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

On January 26, 2000, this matter came before the Tennessee Regulatory Authority ("Authority") upon the Application of TriVergent Communications, Inc. ("TriVergent") for a Certificate of Public Convenience and Necessity as a Competing Telecommunications Service Provider to offer a full array of telecommunications services within the State of Tennessee (the "Application"). The Application was made pursuant to Tenn. Code Ann. § 65-4-201 *et seq.*

LEGAL STANDARD FOR GRANTING CCN

TriVergent's Application was considered in light of the criteria for granting a certificate of public convenience and necessity ("CCN") as set forth in applicable statutes. Tenn. Code Ann.

§ 65-4-201 provides, in part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and

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operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without first having obtained, in like manner, a similar certificate. . . .

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial and technical abilities to provide the applied for services.

An authority order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for certification of a competing telecommunications service provider shall be entered no more than sixty (60) days from the filing of the application.

(d) Subsection (c) is not applicable to areas serviced by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995.

In addition, pursuant to Tenn. Code Ann. § 65-5-212, competing telecommunications providers are required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses, and (2) information or programs that might provide technical assistance to such businesses.

INTERVENORS

Public notice of the hearing in this matter was made by the Authority's Executive Secretary, pursuant to Tenn. Code Ann. § 65-4-204. No parties intervened prior to the hearing or opposed TriVergent's Application.

TRIVERGENT'S HEARING

TriVergent's Application was uncontested. At the hearing held on January 26, 2000, TriVergent was represented by Mr. H. LaDon Baltimore of Farrar & Bates, 211 7th Avenue North, Suite 420, Nashville, Tennessee 37219. In addition, Mr. John Lummus, TriVergent's Manager of Government Affairs, presented testimony and was subject to examination by the Authority's Directors. Upon TriVergent's conclusion of the proof in its case, the Authority granted TriVergent's Application based upon the following findings of fact and conclusions of law:

I. APPLICANT'S QUALIFICATIONS

1. TriVergent is a South Carolina corporation that was incorporated on October 28, 1997. TriVergent has obtained the required authority to transact business in the State of Tennessee on August 8, 1999.
2. The complete street address of TriVergent's principal place of business is 300 East McBee Street, Greenville, South Carolina 29601. The phone number is (864) 271-6335, and the fax number is (864) 963-1295. TriVergent's counsel is H. LaDon Baltimore, referenced above.
3. The Application and supporting documentary information existing in the record indicate that TriVergent has the technical and managerial qualifications necessary to provide a full array of local exchange and interexchange telecommunications services within the State of Tennessee on a facilities-based and resale basis.
4. TriVergent has the necessary capital and financial capability to provide the services it proposes to offer.
5. TriVergent has represented that it will adhere to all applicable policies, rules and orders of the Authority.

II. PROPOSED SERVICES

1. TriVergent intends to provide switchless interexchange telecommunications services from points of origin within the state of Tennessee to intrastate, interstate and international points of termination. TriVergent will also provide all services that can be provided by a local exchange carrier. In certain areas of the state, TriVergent will operate as a switchless or bundled reseller, relying on the resold services of the incumbent LECs' retail services and facilities based services.

2. Except as may be authorized by law, TriVergent does not intend to serve any areas currently being served by an incumbent local telephone company with fewer than 100,000 total access lines where local exchange competition is prohibited pursuant to Tenn. Code Ann. § 64-4-201(d).

III. PERMITTING COMPETITION TO SERVE THE PUBLIC CONVENIENCE AND NECESSITY

Upon a review of the Application and the record in this matter, the Authority finds that approval of TriVergent's Application would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications service markets in the state and by fostering the development of an efficient technologically advanced statewide system of telecommunications services.

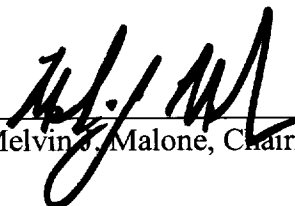
IV. SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS PARTICIPATION PLAN & BUSINESS ASSISTANCE PROGRAM

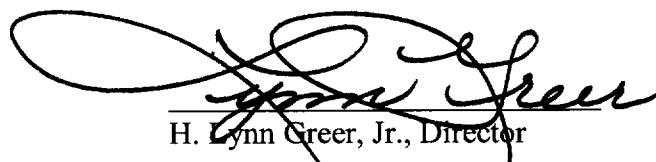
1. Pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's Rules, TriVergent has filed a satisfactory small and minority-owned telecommunications business participation plan.

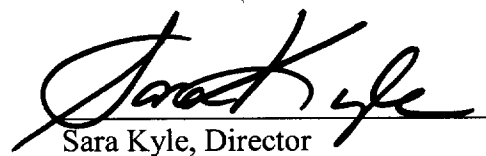
2. TriVergent has acknowledged its obligation to contribute to the funding of the small and minority-owned telecommunications business assistance program, as set forth in Tenn. Code Ann. § 65-5-213.

IT IS THEREFORE ORDERED THAT:

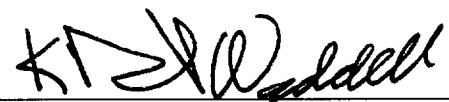
1. TriVergent's Application is approved;
2. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order; and
3. Any party aggrieved with the Authority's decision in this matter has the right of judicial review of filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.


Melvin J. Malone, Chairman


H. Lynn Greer, Jr., Director


Sara Kyle, Director

ATTEST:


K. David Waddell, Executive Secretary